

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Petitioner,  
  
v.  
  
JOHN J. SCHLABACH,  
  
Defendant.

No. CV-08-0095-CI

ORDER ADOPTING MAGISTRATE  
JUDGE'S REPORT AND  
RECOMMENDATION

**THIS MATTER** comes before the Court on the Report and Recommendation For Order Directing Enforcement of IRS Summons, Ct. Rec. 25. Assistant United States Attorney Michael J. Roessner represents the Petitioner. The Respondent is proceeding pro se.

The Internal Revenue Service ("IRS"), through counsel, petitions to enforce the summons issued to the Respondent on June 20, 2007 ("the Summons"). On March 21, 2008, Magistrate Judge Imbrogno issued an Order to Show Cause, Ct. Rec. 10, directing the Respondent to show cause why he should not be required to comply with the Summons. Having considered the Respondent's response to the Order to Show Cause, as well as the Petitioner's reply, the Magistrate Judge found enforcement of the summons to be appropriate. She accordingly directed the Respondent to appear before a proper IRS agent within 20 business days.

Rather than appearing as directed, the Respondent filed an

1 objection to the magistrate's order. On May 7, 2008, the Magistrate  
2 Judge filed a Report and Recommendation that was served on the parties  
3 and contained notice that any objections to the Findings and  
4 Recommendation were to be filed within ten (10) court days of the date  
5 of service. (Ct. Rec. 25). The Respondent timely objected and the  
6 Petitioner timely responded.

7 Having reviewed and considered the arguments of the parties, as  
8 well as the Magistrate Judge's Report and Recommendation, the Court  
9 finds the Report and Recommendation filed on May 7, 2008 to be  
10 supported by the record and the analysis of the Magistrate Judge. The  
11 Respondent's Objection raises the same issues discussed in his  
12 response to the Order to Show Cause. As correctly stated in the  
13 Report and Recommendation, neither the governing statute nor case law  
14 requires the IRS to establish probable cause for the issuance of a  
15 summons. Rather, under *United States v. Powell*, 379 U.S. 48, 85 S.  
16 Ct. 248, 13 L. Ed. 2d 112 (1964), the IRS must make a *prima facie*  
17 showing of "good faith." The Petitioner has met this burden and shown  
18 that enforcement of the summons is warranted by a "legitimate  
19 purpose."

20 The Respondent also objects on the basis of the alleged  
21 overbreadth of the Summons. The IRS has broad authority to  
22 investigate; however, a summons must be specific enough to demonstrate  
23 relevance and materiality to the investigation. 26 U.S.C.A. § 7602;  
24 see *United States v. Luther*, 481 F.2d 429, 432 (9th Cir.  
25 1973) (explaining that Section 7602 authorizes the IRS to "to fish").  
26 While the summons at issue in this case requires production of

1 extensive documents, these documents are relevant and concern  
2 transactions related to the IRS investigation. The Court concludes  
3 that the Summons is not over-broad.

4 In view of the foregoing, the Court adopts the Magistrate Judge's  
5 Report and Recommendation in its entirety. Accordingly,

6 **IT IS HEREBY ORDERED:**

7 1. The Report and Recommendation For Order Directing Enforcement  
8 of IRS Summons, **Ct. Rec. 25**, is **ADOPTED IN FULL**.

9 2. The Respondent is ordered to appear before the investigating  
10 revenue agent, Kate Lopez, or any other proper agent, officer or  
11 employee of the IRS designated by the Petitioner, to testify and  
12 produce records as demanded in the Summons, **NOT LATER THAN 20 BUSINESS**  
13 **DAYS FOLLOWING ENTRY OF THIS ORDER ADOPTING MAGISTRATE JUDGE'S REPORT**  
14 **AND RECOMMENDATION**.

15 3. If the Respondent fails to comply with the present order, the  
16 Petitioner may request certification of facts for sanctions for  
17 contempt of court.

18 **IT IS SO ORDERED.** The District Court Executive is hereby  
19 directed to enter this order and furnish copies to counsel for the  
20 Petitioner **and to the Respondent**.

21 **DATED** this 17th day of June, 2008.

22  
23 s/ Fred Van Sickle  
Fred Van Sickle  
24 Senior United States District Judge  
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